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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,702	02/05/2004	Cliff Hartsell	H-0900.03	5620
41418	7590	05/17/2005	EXAMINER	
LAW OFFICES OF CHRISTOPHER L. MAKAY 1634 MILAM BUILDING 115 EAST TRAVIS STREET SAN ANTONIO, TX 78205-1763			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/772,702	<b>Applicant(s)</b> HARTSELL, CLIFF	
	<b>Examiner</b> Andrea M. Valenti	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22,25,27-38 and 47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22,25,27-38 and 47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-15, 17, 25, 27-29, 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15 February 2005] 8 pages in view of U.S. Patent No. 6,318,290 to Fisher.

Regarding Claim 1, Woodland Fish and Wildlife teaches a protective structure (Woodland page 3 Roosts), where in a fowl uses the protective structure as a sanctuary and as a shelter; a habitat strip (Woodland page 2 Food and Cover) disposed near the protective structure, wherein the fowl uses the habitat strip for nesting; and a station comprising a water supply (Woodland page 3, first column, second paragraph), wherein the fowl establish a territory around the water supply, and utilize the protective structure and habitat strip such that they do not migrate to another location.

Woodland Fish and Wildlife teaches the importance of feed all year round and means of providing feed, but is silent on the station further includes a fowl feeding device. However, Fisher teaches a fowl feeding device. It would have been obvious to one of ordinary skill in the art to modify the teachings of Woodland with the teachings of

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Fisher for the advantage of keeping rodents out of the fowl feed as taught by Fisher Col. 3 line 44-46).

Woodland Fish and Wildlife as modified teaches the fowl feeding device comprises: a product tube (Fisher #66), wherein the product tube accepts a food product at a first end; a dispense cap (Fisher #68) coupled to a second end of the product tube, the dispense cap including dispense apertures (Fisher #72, 70) sized to retain the food product within the product tube (Fisher inherently teaches that the food is retained, once the product tube is filled the food level in the tube does not move in the unless fowl come and peck at the food in the aperture and eat the food, if the device didn't retain the seed once it was filled it would flow non-stop out of the apertures immediately; also, applicant has not claimed nor presented a criticality of a specific aperture size and the ability of the aperture to retain food is also an inherent function of the size of the food), wherein the food product stored in the product tube is available through the dispense apertures; wherein the food product must be pecked from the dispensing apertures by the fowl (Fisher inherently teaches that the food is pecked out since Fisher teaches a bird feeder and pecking is how birds eat, so as the seed collects at the opening of the aperture of Fisher the fowl will inherently peck at it) and a dish (Fisher #78) coupled to the dispense cap, wherein food product exiting the dispense apertures and not consumed collects in the dish.

Regarding Claim 2, Woodland Fish and Wildlife as modified teach the food items from the habitat strip are the primary source of food for the fowl (Woodland page 2 Food and Cover).

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Regarding Claim 3, Woodland Fish and Wildlife as modified teach the fowl also utilize the habitat strip for cover (Woodland page 2 Food and Cover).

Regarding Claim 4, Woodland Fish and Wildlife as modified teach the protective structure comprises a rigid structure to withstand the perusal of a larger animal (Woodland page 3 Roost).

Regarding Claim 5, Woodland Fish and Wildlife as modified teach the protective structure further comprises a raised floor suitable for use by the fowl (Woodland page 3 Roost Figs).

Regarding Claim 6, Woodland Fish and Wildlife as modified teach the protective structure further comprises a cover to provide security to the fowl (Woodland page 3, third column, first paragraph).

Regarding Claim 8, Woodland Fish and Wildlife as modified teach the cover is a natural vegetative cover (Woodland page 3, third column, first paragraph).

Regarding Claim 9, Woodland Fish and Wildlife as modified teach the cover is of a man-made material (Woodland Roost Figs. page 3).

Regarding Claim 10, Woodland Fish and Wildlife as modified teach the habitat strip is a plowed and planted portion of earth (Woodland page 4, first column, Food section, first paragraph).

Regarding Claim 11, Woodland Fish and Wildlife as modified teach the habitat strip is planted with native grasses (Woodland page 4, first column, Food section, first paragraph).

Regarding Claim 12, Woodland Fish and Wildlife as modified inherently teach the native grasses produce seeds at varying times of the year such that there is always a supply of food for the fowl (Woodland page 4, first column, Food section and page 2, section Food and Cover, first paragraph).

Regarding Claim 13, Woodland Fish and Wildlife as modified teach a water supply and the station includes a barrier assembly to keep large animals away from the water supply (Woodland page 3, first column, line 6).

Regarding Claim 17, Woodland Fish and Wildlife as modified teach the water supply is housed within the barrier assembly (Woodland page 3, first column, line 6).

Regarding Claim 25, Woodland Fish and Wildlife as modified teaches the food product that collects in the dish is available to the fowl for consumption (Fisher #78 and Fig 1).

Regarding Claim 27, Woodland Fish and Wildlife as modified teaches a cap (Fisher #112, 22, 26) coupled to the first end of the product tube to protect the food product from the environment.

Regarding Claim 28, Woodland Fish and Wildlife as modified teaches the cap is removable, thereby providing the ability to refill the product tube (Fisher #112, 22, 26).

Regarding Claim 29, Woodland Fish and Wildlife as modified teaches a shroud disposed on the product tube and above the dish to prevent water from falling into the dish (Fisher #94).

Regarding Claim 47, Woodland Fish and Wildlife as modified teaches a riser block (Fisher #60) secured to the dish (Fisher #78) and supporting the dispense cap

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(Fisher #68, applicant has not claimed that the riser is in direct contact with the dish, thus Fisher teaches it is secured to the dish via element #50, 56, 58, 28, 26, etc) thereon, thereby raising the dispense cap to a suitable pecking height for the fowl.

Regarding Claim 14, Woodland Fish and Wildlife as modified is silent on a door panel utilized by an operator during setup and maintenance. However, it is old and notoriously well-known to provide doors, portals, hatches, etc for ergonomic ease of access to an enclosed area for routine maintenance or for refilling the supply if necessary or for adding supplemental nutrients to the supply. This limitation does not present a patentably distinct limitation.

Regarding Claim 15, Woodland Fish and Wildlife as modified inherently teaches the barrier assembly permits entry of fowl there through and restricts entry of larger animals (Woodland page 3, first column).

Claims 32 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 6,318,290 to Fisher as applied to claims 1 above, and further in view of U.S. Patent No. 3,717,126 to Falcone et al.

Regarding Claim 32, Woodland Fish and Wildlife as modified is silent on the dish includes drain holes to prevent liquids from accumulating in the dish. However, Falcone teaches a feeder with drain holes (Falcone Fig. 1 and 6 #78). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland

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with the teachings of Falcone at the time of the invention to remove undesirable moisture from the feed to prevent the feed from clumping.

Regarding Claim 31, Woodland Fish and Wildlife as modified teaches a landing disposed beneath the dish for use by the fowl in approaching the feeding device (Falcone #80).

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 6,318,290 to Fisher as applied to claims 1 above, and further in view of U.S. Patent No. 6,612,257 to George.

Regarding Claim 30, Woodland Fish and Wildlife as modified is silent on a shield, wherein the shield lines the dispense apertures, thereby preventing small animals from enlarging the dispense apertures and removing excess amounts of the food product. However, George teaches a shield on a bird feeder aperture (George Fig. 2 #30, Fig. 5 #76 and Fig. 3 #40). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of George at the time of the invention to prevent squirrels and to slow and regulate the amount of seed removed by the bird to prevent wasteful discharges.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996,



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<http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet

15February 2005] 8 pages in view of U.S. Patent No. 6,318,290 to Fisher as applied to claims 1 and 4-6 above, and further in view of U.S. Patent No. 5,924,380 to Rayborn.

Regarding Claim 7, Woodland Fish and Wildlife as modified teach the protective structure, but are silent on it further comprises a door of a size suitable for raking out the protective structure. However, Rayborn teaches a protective fowl structure with a door (Rayborn Fig. 1 #19). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of Rayborn for ergonomic access to the structure for routine maintenance and to access and injured bird without disrupting the entire structure.

Claims 16 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 6,318,290 to Fisher as applied to claims 1 and 13-14 above, and further in view of U.S. Patent No. 4,982,702 to Copps.

Regarding Claim 16, Woodland Fish and Wildlife as modified is silent on the barrier assembly further comprises a roof panel to protect components located within the barrier assembly. However, Copps teaches a barrier that has a roof and sides that only permits access to the fowl (Copps Fig. 1 and abstract). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of Copps since the modification is merely complete enclosure of the water

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supply, the enclosure performing the same intended function of permitting access just to the fowl and modified merely for the advantage of enhanced protection of the fowl and also protection to the water supply from vandalism.

Regarding Claim 18, Woodland Fish and Wildlife as modified teach the water supply is housed beneath the roof panel for protection from the elements (Copps Fig. 1).

Regarding Claim 19, Woodland Fish and Wildlife as modified teaches the water supply comprises: a trough (Copps #24); a storage tank containing a water (Copps #20); and a float valve (Copps #30) disposed on the trough and in fluid communication with the storage tank, wherein water disposed in the storage tank flows through the float valve to the trough when the water level in the trough is below the desired level, and further wherein the water does not flow through the float valve when the water level in the trough is at or above the desired level, thereby continuously maintaining the water level in the trough.

Regarding Claim 20, Woodland Fish and Wildlife as modified teaches a stand (Copps #18) to support the storage tank and keep the tank elevated above the trough.

Regarding Claim 21, Woodland Fish and Wildlife as modified teaches the trough further comprises a ramp (Woodland page 3, first column, second paragraph) disposed in the trough, wherein the fowl that fall into the water exit the water by walking up the ramp.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 6,318,290 to Fisher and in view of U.S. Patent No. 4,982,702 to Copps as applied to claim 1, 19, and 20 above, and further in view of U.S. Patent No. 2,618,237 to McDermott et al.

Regarding Claim 22, Woodland Fish and Wildlife as modified is silent on the trough assembly is cantilevered off the front end of the stand assembly such that insects cannot climb to the water in the trough. However, McDermott teaches a cantilevered fowl water trough (McDermott Fig. 5). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of McDermott at the time of the invention since the modification is merely the shifting location of a known element performing the same intended function, modified for the advantage of making the device easily portable to one area of the habitat to another.

Claim 33-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodland Fish and Wildlife, Quail on Small Woodlands, published July 1996, <http://www.dfw.state.or.us/public/woodlandarc/quail.pdf> [retrieved from internet 15February 2005] 8 pages in view of U.S. Patent No. 6,318,290 to Fisher as applied to claim 1 above, and further in view of U.S. Patent No. 2,896,575 to Scruggs.

Regarding Claim 33, Woodland Fish and Wildlife as modified teaches ground support, but is silent on a hanger support used to suspend and stabilize the fowl feeding

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device within the barrier assembly. However, Scruggs teaches a hanging support for a fowl feeding device (Scruggs Fig. 6 #25 and 24). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Woodland with the teachings of Scruggs at the time of the invention since Scruggs teaches both ground support (Scruggs Fig. 3 #26) and hanging support (Scruggs Fig. 6) are merely alternate equivalent selected support means (Scruggs Col. 2 line 65-71 and Col. 3 line 1-5) selected for the known advantage of preventing squirrels from having direct/stable access to the bird feed.

Regarding Claim 34, Woodland as modified inherently teaches the suspension height of the fowl feeding device is adjustable to accommodate non matured fowl (Scruggs the height is adjustable depending on the insertion depth).

Regarding Claim 35, Woodland Fish and Wildlife as modified teaches the hanger support comprises a hanger (Scruggs Fig. 8 #38, 23) that is adjustable.

Regarding Claim 36, Woodland Fish and Wildlife as modified teaches the hanger support comprises a downturn segment (Scruggs Fig. 6 #19) for rotational stability.

Regarding Claim 37, Woodland Fish and Wildlife as modified teaches the hanger support comprises tube stabilizers (Scruggs Fig. 8 nuts above and below element #24) to prevent movement of the feeding device along the hanger support.

Regarding Claim 38, Woodland Fish and Wildlife as modified inherently teaches the suspension of the fowl feeding device prevents insects from accessing the feeding device and any stored product.

### ***Response to Arguments***

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Applicant's arguments with respect to claims 1-22, 25, 27-38 and 47 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that McDermott teaches that the trough assembly is cantilevered as illustrated in McDermott Fig. 5 element #48 is cantilever off of element #45 and since it is elevated of the ground it inherently prevents insects from climbing into the water. Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kosciuk, James R. and Peloquin, E. Paul. 1986. "Elevated Quail Roosts: Section 5.1.5, US Army Corps of Engineers Wildlife Resources Management Manual," Technical Report EL-86-18, July 1986, 19 pages total including title pages and abstract.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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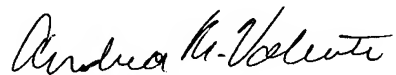
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12 May 2005



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600